

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MASOOD ALI KHAN,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:07CV1070 RWS
)	
ALBERTO GONZALES, et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER


This matter is before the Court on defendants' motion to dismiss, or in the alternative for remand. Plaintiff opposes the motion and the parties have briefed the issues. For the reasons stated below, the motion for remand will be granted.

Plaintiff asks this Court to adjudicate his application for naturalization. In support of their motion for remand, defendants contend that no determination has been made on plaintiff's eligibility for naturalization because the United States Citizenship and Immigration Services (USCIS) has not completed their investigation of plaintiff. In particular, defendants were informed that plaintiff had been arrested on August 27, 2007, after this action was filed. USCIS requested information from plaintiff about his arrest, but has yet to receive it. For this reason, defendants request a remand to USCIS with specific instructions that plaintiff's application be adjudicated within 120 days.

Plaintiff opposes remand, claiming that his arrest for driving under the influence should not provide a sufficient basis upon which to deny his application. However, the USCIS has not yet made a determination whether this arrest should affect plaintiff's application because it has not been provided the opportunity to investigate it. For this reason, I find that a remand, with specific instructions to adjudicate plaintiff's application within a set time period, is appropriate. See Wang v. Mueller, 2007 WL 2873415, *2 (E.D. Mo. Sept. 26, 2007). Accordingly, after careful consideration,

IT IS HEREBY ORDERED that defendants' motions for remand [#3-2, #9] are granted, and this case is remanded to the United States Citizenship and Immigration Services for an adjudication of plaintiff's naturalization application within 120 days.

IT IS FURTHER ORDERED that defendants' alternative motion to dismiss [#3-1] is denied.



RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE

Dated this 26th day of October, 2007.